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Supreme Court, U.S.
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No. 94-9247

In The

Supreme Court of the United States

October Term, 1995

CHARLES CARLISLE,

Petitioner,

vs.

UNITED STATES OF AMERICA.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

JOINT APPENDIX

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DATE	DESCRIPTION OF ENTRY
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07/13/93	Verdict as to Petitioner Charles Carlisle
07/23/93	Petitioner's Motion for a Judgment of Acquittal Pursuant to Federal Rule of Criminal Procedure 29(c) and Brief in Support of Motion
07/30/93	Government's Response to Petitioner's Motion for Acquittal and Brief in Support of Response
08/24/93	District Court's Opinion Denying Motion for Acquittal
08/24/93	District Court's Order Denying Motion for Acquittal
10/14/93	Transcript of Sentencing/Discharge held on October 14, 1993
10/28/93	District Court's Opinion
10/28/93	District Court's Judgment Withdrawing Court's 08/24/93 Opinion and Order and Granting Petitioner's Motion for Acquittal
02/21/95	Opinion of the United States Court of Appeals for the Sixth Circuit
07/07/95	Judgment

UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

IGNACIO AMBRIZ,
CHARLES CARLISLE,
DOLORES RUPERT,
TIMOTHY SMITH,
MICHAEL HALL,
AMELIA RAMON, and
ISREAL ALMEDIA,

Defendants.

No. 1:93:CR:66

Hon. Richard A. Enslen

INDICTMENT

The Grand Jury charges:

COUNT ONE

(MARIJUANA CONSPIRACY)

From on or about April 1, 1993, until on or about April 11, 1993, in Calhoun County, in the Western District of Michigan, Southern Division, and elsewhere,

IGNACIO AMBRIZ,
CHARLES CARLISLE,
DOLORES RUPERT,
TIMOTHY SMITH,

MICHAEL HALL,
AMELIA RAMON, and
ISREAL ALMEDIA,

did knowingly, willfully, and unlawfully combine, conspire, confederate and agree with Thomas Crawford and persons known and unknown to the grand jury to knowingly and intentionally possess with intent to distribute marijuana, a schedule I controlled substance, in violation of 21 United States Code, Sections 841 and 846.

OVERVIEW OF THE CONSPIRACY

On April 8, 1993, the Missouri State Police intercepted a U-Haul van driven by Thomas Crawford. The van contained approximately 240 pounds of marijuana and some household goods. Crawford said he was en route from Texas to the Battle Creek, Michigan, area where he was to deliver the marijuana. On April 9, 1993, Crawford arrived in Battle Creek and called the person to whom he was to deliver the marijuana. During April 10 and 11 the marijuana was moved several times in the Battle Creek area, finally settling in a locker rented by Amelia Ramon in a storage facility on the outskirts of Battle Creek. To effect the objects of the conspiracy, at least one co-conspirator did at least one of the following overt acts:

OVERT ACTS

1. On or about April 9, 1993, AMELIA RAMON instructed Thomas Crawford to remain in his hotel with the 240 pounds of marijuana he had driven to Battle

Creek from Texas until a co-conspirator arrived from Texas.

2. On or about April 10, 1993, Thomas Crawford met with AMELIA RAMON and DOLORES RUPERT, a/k/a Lolita to discuss the movement of the 240 pounds of marijuana he had transported from Texas. Crawford was informed by AMELIA RAMON that they would move the marijuana as soon as IGNACIO AMBRIZ, a/k/a Bobby Ambriz, arrived from Texas.

3. On or about April 10, 1993, DOLORES RUPERT led Thomas Crawford, driving the van with 240 pounds of marijuana, to her residence at 218 Yale Street, Battle Creek, Michigan, with the intent to conceal the marijuana there.

4. On or about April 10, 1993, DOLORES RUPERT and CHUCK CARLISLE led Thomas Crawford, driving the van with 240 pounds of marijuana, to 315 Elm Street, Battle Creek, Michigan, with the intent to conceal the marijuana there.

5. On or About April 10, 1993, CHUCK CARLISLE drove Thomas Crawford and AMELIA RAMON to a hotel in Battle Creek where they met with IGNACIO AMBRIZ and ISREAL ALMEDIA. The quartet discussed the off-loading and distribution of marijuana and the distribution of the proceeds.

6. On or about April 11, 1993, Thomas Crawford, ISREAL ALMEDIA, AMELIA RAMON and a female named Lupe (LNU) met at a hotel and discussed moving the 240 pounds of marijuana in the U-Haul van.

7. On or about April 11, 1993, TIMOTHY SMITH drove the U-Haul van, containing 240 pounds of marijuana, from 315 Elm Street, Battle Creek, Michigan, to a storage facility, with the intent to conceal the marijuana there.

8. On or about April 11, 1993, MICHAEL HALL and AMELIA RAMON used an automobile to conduct surveillance of the U-Haul van containing 240 pounds of marijuana on its way to the storage facility.

9. On or about April 11, 1993, AMELIA RAMON and Lupe (LNU) rented a locker at a storage facility with the intent to store the 240 pounds of marijuana brought to Battle Creek by Thomas Crawford there.

21 U.S.C. § 841
21 U.S.C. § 846
18 U.S.C. § 2

A TRUE BILL

/s/ Barbara Novak
GRAND JURY FOREPERSON

JOHN A. SMIETANKA
United States Attorney

/s/ James R. Redford
JAMES R. REDFORD (38462)
Assistant United States Attorney
United States Attorney's Office
399 Federal Building
Grand Rapids, Michigan 49503

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

(Caption Omitted In Printing)

DEFENDANT CARLISLE'S MOTION FOR A JUDGMENT OF ACQUITTAL PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 29(c)

Defendant, through his attorneys, GEMRICH, MOSER, BOWSER, FETTE & LOHRMANN, moves this Court for the entry of Judgment of Acquittal, pursuant to Federal Rule of Criminal Procedure 29(c). A brief in support of this Motion is attached.

Dated:
July 23, 1993

GEMRICH, MOSER, BOWSER,
FETTE & LOHRMANN

By: /s/ Scott Graham
Scott Graham
Attorney for Defendant
BUSINESS ADDRESS:
222 South Westnedge
Avenue
Kalamazoo, MI 49007
(616) 382-1030

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

(Caption Omitted In Printing)

BRIEF IN SUPPORT OF DEFENDANT CARLISLE'S MOTION FOR JUDGMENT OF ACQUITTAL PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 29(c)

Defendant was charged in a single count Indictment with conspiracy to possess marijuana with intent to distribute. On July 14, 1993, following jury trial, Defendant was found guilty. This Court discharged the jury following the verdict. Defendant requests this Court to enter a Judgement of Acquittal in this matter pursuant to Federal Rule of Criminal Procedure 29(c). Petitioner contends that such a Judgment is appropriate where no rational trier of fact could have determined that Defendant was guilty of the charge contained in the Indictment.

This Court is well aware of the standard of review for evaluation of a motion pursuant to Rule 29(c). The Court must determine whether viewing the evidence in the light most favorable to the government, a rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Here, Defendant contends that no rational trier of fact could have found that he intended to joint [sic] the conspiracy.

The evidence at trial demonstrated that, prior to coming to Michigan, Thomas Crawford had not heard of Defendant Carlisle. On the evening of April 10, Delores Rupert told Crawford that Rupert would lead Crawford

to her house and that she would then take Crawford to the Stouffers Hotel in Battle Creek.

Rupert then drove a car to her residence at 218 Yale Street, followed by Crawford. Amelia Ramon traveled with Rupert.

Crawford tried to pull the U-Haul truck into the driveway at 218 Yale. Rupert approached him and told him to move the truck down the street. Defendant Carlisle then drove Ramon to the Elm Street address, where Crawford left the truck. Carlisle then drove Ramon and Crawford to the Stouffers Hotel. During this trip, there was no discussion or drug activity. There is no evidence that Carlisle had any further contact with any member of the alleged conspiracy.

Based upon these facts, it is impossible to conclude Carlisle "joined" the conspiracy. There is no indication that Carlisle did anything more than assist Ramon and Crawford in traveling to the Stouffers in an effort to cause Crawford to move the truck away from the 218 Yale Street address. This alone does not prove the elements of the offense.

CONCLUSION

For these reasons, Defendant requests this Court to enter a Judgment of acquittal in this matter pursuant to Federal Rule of Criminal Procedure 29(c).

Dated:
July 23, 1993

GEMRICH, MOSER, BOWSER,
FETTE & LOHRMANN

By: /s/ Scott Graham
Scott Graham
Attorney for Defendant
BUSINESS ADDRESS:
222 South Westnedge
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UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES CARLISLE,

Defendant.

/

No. 1:93:CR:66

Hon. Richard A. Enslen

GOVERNMENT'S RESPONSE TO DEFENDANT CARLISLE'S MOTION FOR JUDGMENT OF ACQUITTAL PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 29(c)

Now comes the United States of America, by and through its attorneys, John A. Smietanka, United States Attorney for the Western District of Michigan, and James R. Redford, Assistant United States Attorney, and in its response to Defendant's Motion for Judgment of Acquittal after the discharge of the jury states as follows:

The Motion for a Judgment of Acquittal should be denied based on the motion being untimely and

unsupported by an analysis of the case as further set forth in the brief in support of this response.

Respectfully submitted,

JOHN A. SMIETANKA
United States Attorney

Dated: July 28, 1993

/s/ James R. Redford
JAMES R. REDFORD
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399 Federal Building
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UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

(CAPTION OMITTED IN PRINTING)

BRIEF IN SUPPORT OF GOVERNMENT'S RESPONSE TO DEFENDANT CARLISLE'S MOTION FOR JUDGMENT OF ACQUITTAL PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 29(c)

Now comes the United States of America, by and through its attorneys, John A. Smietanka, United States Attorney for the Western District of Michigan, and James R. Redford, Assistant United States Attorney, and in its Brief in Support of its Response to Defendant's Motion for Judgment of Acquittal states as follows:

Federal Rule of Criminal Procedure 29(c) provides that a Defendant may, after the jury returns a verdict of guilty, bring a motion for judgment of acquittal within seven days after the jury is discharged. The jury in the instant case was discharged on July 13, 1993. The motion of Defendant Carlisle was made on July 23, 1993. Federal Rule of Criminal Procedure 45(a) provides that "when a period of time prescribed or allowed [for filing] is less than 11 days, intermediate Saturdays and holidays shall be excluded in the computation." Excluding Saturday, July 17 and Sunday, July 18, 1993 from the computation period, the seven day period within which Defendant Carlisle had to file his motion under Rule 29(c) ended on July 22, 1993. The filing of the motion on July 23 is

outside of the time period allowed by the rule and therefore denies this Court jurisdiction to review the motion. *See, United States v. Henshaw,* 687 F. Supp. 183 (E.D. Pa. 1988), *aff'd without op.,* 862 F.2d 311 (3rd Cir. 1988) (defendant's motion for a judgment of acquittal being filed eight court business days after jury's verdict was recorded and jury was discharged was untimely.)

Should the Court examine the merits of the motion of the Defendant, the standard of review is whether taking the evidence in the light most favorable to the Government, a rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *Jackson v. Virginia,* 443 U.S. 307, 319 (1979). *See also, United States v. Montgomery,* 980 F.2d 388 (6th Cir. 1992); *United States v. Ingruo,* 844 F.2d 314, 315 (6th Cir. 1988); and *Kowalchuk v. United States,* 176 F.2d 873 (6th Cir. 1949).

In the instant case, Defendant Carlisle was shown through his actions and his statements to be a member of the conspiracy to possess with intent to distribute marijuana in the Western District of Michigan. His actions regarding the leading of the vehicle containing the marijuana as well as his failing to object to the presence of the marijuana clearly indicated to the trier of fact that he was a member of the agreement and that the purpose of the agreement was to possess with intent to distribute marijuana.

The Government respectfully submits that the motion is unsupported by the analysis of the facts as presented at trial and respectfully prays the motion be denied as

untimely and, in the alternative, that it be denied as unfounded in fact and law.

Respectfully submitted,

JOHN A. SMIETANKA
United States Attorney

Dated: July 28, 1993 /s/ James R. Redford
JAMES R. REDFORD
(P38462)
Assistant United States Attorney
399 Federal Building
Grand Rapids, Michigan
49503
(616) 456-2404

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES
OF AMERICA,

Plaintiff,

v

CHARLES CARLISLE,

Defendant.
_____/

File No. 1:93:CR:66-02

HON. RICHARD A. ENSLEN

OPINION

The matter before the Court is defendant Carlisle's motion for a judgment of acquittal pursuant to Fed. R. Crim. P. 29(c). Defendant was charged in a single count Indictment with conspiracy to possess marijuana with intent to distribute. On July 13, 1993, a jury found defendant guilty. Defendant's motion does not claim that there was not an agreement to possess and distribute marijuana. Instead, his motion argues that the evidence was insufficient to prove that he joined the conspiracy.

The standard of review for claims of insufficient evidence is "whether after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact cold have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original); *United States v. Boling*, 869 F.2d 965 (6th Cir. 1989). Reviewing the evidence in the light most favorable to the government

means that I must make all credibility choices and inferences in a manner that supports the jury's verdict. Further, circumstantial evidence alone is sufficient to sustain a conviction and such evidence need not remove every reasonable hypothesis except that of guilt. *United States v. Stone*, 748 F.2d 361, 363 (6th Cir. 1984).

The evidence presented against Carlisle at trial was as follows. On the evening of April 10, 1993, defendant Rupert (Carlisle's common-law wife), defendant Ramon (Ms. Rupert's mother), and Thomas Crawford arrived at the residence on Yale Street that Carlisle and Rupert shared. Ramon travelled in a car driven by Rupert, and they were followed by a truck full of marijuana. That truck was driven by Crawford, the government's primary witness, who was wearing a tape-recording device at the time.

In his opening statement defendant's counsel stated that Rupert told Carlisle that the truck contained marijuana, and that she was scared. The inference that Carlisle knew that the truck contained marijuana could also be drawn from a hearsay statement by Rupert I admitted. As soon as Ramon, Rupert and Crawford arrived at the Yale Street residence, Crawford recorded the following statement of Rupert: "Okay, just pull out and Chuck [Carlisle] says to go down the street and just park for awhile because he said he's heard over the scanner, there's some cops around here." Exhibit 48-A, Transcript of Nagra Tape #2, Cassette #1A, p. 5. Crawford parked the truck down the street.

When Crawford returned from parking the truck, he was introduced to Carlisle. Crawford testified that Carlisle was quiet and did not appear nervous. At this point, the parties appear to be discussing where to park the truck for the evening, and the following conversation ensued:

Ramon:	We can park it behind the house.
Crawford:	All right mighty good.
Carlisle:	Figure right down the drive.
Ramon:	Yeah, because my son called, my grandson called and said there was cops around here.
Rupert:	around this area
Ramon:	unintelligible
Rupert:	and we don't want to take a chance right now
Carlisle:	We don't want to take no chances.
Crawford:	No, un uh, that's why I was going, I, the speed limit was thirty and so I stayed right on it.
Ramon:	Yeah? Oh and before I forget, on the key, the combination. I took the thing off and I put it on there so . . .
Carlisle:	Okay . . . is that for the back?
	* * * (one page later) * * *
Ramon:	We're going (unintelligible)
Crawford:	Oh yeah it's best not take any . . .

Carlisle: No I won't take no chances . . .

Crawford: Okay.

Id. at 5-7.

At Rupert's request, Carlisle then drove Amelia Ramon to her home shortly after Rupert, Ramon and Crawford arrived at the Yale Street residence. The truck full of marijuana, driven by Crawford, followed. The truck was left at Ramon's home, and Crawford joined Carlisle and Ramon in the car. Carlisle then drove Crawford and Ramon to the Stouffer Hotel. During this trip, tape recordings indicated that there was nothing but casual banter about topics such as cars and the city of Battle Creek. Carlisle dropped them off and left. There was no evidence that Carlisle had any further contact with any member of the conspiracy.

Upon review under the foregoing standards, I find that the evidence in this case is sufficient to sustain defendant's conviction. Viewed in the light most favorable to the government, I believe that a rational trier of fact could find beyond a reasonable doubt that Carlisle knew about the conspiracy, and that Carlisle knowingly and voluntarily joined the conspiracy.

Instruction 10C explained that in order to establish knowing and voluntary joinder,

> the government must prove that [the defendant] knew the conspiracy's main purpose, and that he voluntarily joined it intending to help advance or achieve his goals. . . . But proof that a defendant simply knew about a conspiracy, or was present at the time, or associated with members of the group, is not enough, even if he

> approved of what was happening or did not object to it. Similarly, just because a defendant may have done something that happened to help a conspiracy does not necessarily make him a conspirator. These are all things that you may consider in deciding whether the government has proved that a defendant joined a conspiracy. But without more they are not enough.

Sixth Circuit Pattern Criminal Instruction No. 3.03 (1991).[1] Review of two cases in which the Sixth Circuit found that the government did not carry the burden described above is instructive. In the unpublished decision of *United States v. Burgess*, 1992 U.S. App. LEXIS 34740 (6th Cir.), the court acknowledged that "[c]onspiracy cases often present difficult questions about the extent to which seemingly passive participants are nonetheless culpable members of the conspiracy." *Id.* at *21. The appellate panel went on to hold that there was insufficient evidence to support defendant Burgess' conviction for conspiracy to possess marijuana with intent to distribute. In *Burgess*, a defendant named Muncy planned to buy marijuana from a DEA agent and informant. Muncy drove to the scheduled rendezvous point with Burgess and a third defendant, Rose. When they arrived, Muncy walked to the agents' car and discussed the purchase. Muncy then went back to his own car and brought

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[1] The Committee Notes cite many cases in support of this instruction. *E.g., United States v. Richardson*, 596 F.2d 157, 162 (6th Cir. 1979) (there must be proof of an intention an [sic] agreement to cooperate in the crime); *Untied States v. Bostic*, 480 F.2d 965, 968 (6th Cir. 1973) (there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose).

Rose to the agents' car with him. After the transaction began, all three were arrested. A search of the car revealed a loaded revolver and $15,000 in cash in the front seat, and scales in the trunk.

Upon review of these facts, the Sixth Circuit concluded that the jury could have inferred Burgess' knowledge of the purpose of the trip, White's possession of money to purchase marijuana, and even the presence of a weapon in the car. However, because Burgess did not participate in the discussions with the agents, he was not mentioned in those conversations, he did not drive the car, and he never left the middle of the front seat, the court held that a rational trier of fact could not find that Burgess knowingly and voluntarily joined the conspiracy.

United States v. Pearce, 912 F.2d 159 (6th Cir. 1990), *cert. denied sub nom Thorpe v. United States*, 111 S.Ct. 978 (1991), provides another example of evidence which the Sixth Circuit found to be insufficient to sustain a conspiracy conviction. Defendants Thorpe and Pearce were convicted of conspiring to possess and distribute crack in violation of 21 U.S.C. § 846 on the following evidence. A SWAT team entered what they suspected was a crack house after an informant purchased crack at the house with registered bills. When they entered, Thorpe ran into the basement yelling "it's a bust." The SWAT team found Thorpe nearby two doses of crack and a loaded revolver. Thorpe had a live round in his pocket that matched those found in the gun. The police found Pearce sitting on a couch in the living room. Next to him was a bag of crack and the registered bills the informant used in his purchase.

The Sixth Circuit reversed both conspiracy convictions. It found that the record was devoid of any evidence that Thorpe and Pearce had entered into an agreement. Although the defendants' presence at the house was unexplained, the court concluded that no rational trier of fact could have found that even tacit coordination between Thorpe, Pearce, or any third party, to maintain a crack house or to distribute crack.

The evidence against Mr. Carlisle surpasses that presented in *Burgess* and *Pearce*. Unlike the *Burgess* defendant, he was more than just present during the conspiracy. He took actions to help hide the contraband from the police. He stated his intention to not "take chances." He inquired whether a key unlocked the back of the truck which contained the marijuana. And finally, in contrast to the *Pearce* defendants, Mr. Carlisle's use of the word "we" in a statement made to other conspirators during a conversation about where to put the truck full of marijuana to avoid the place, "we don't want to take no chances," could indicate joinder with the conspiracy to a rational trier of fact. I find that Carlisle's hearsay statement concerning the scanners, his statements evincing a desire to avoid the police, and the fact that he drove a conspirator (his common law mother-in-law) to her home, and then drove two conspirators to a hotel and dropped them off, is sufficient for a rational trier of fact to find that he knowingly and voluntarily joined the conspiracy.

Viewing the evidence in the light most favorable to the government, I find that the government's case against Charles Carlisle is sufficient to prove beyond a reasonable doubt that Carlisle knowingly and voluntarily joined

the conspiracy. As a result, defendant's motion will be denied.

Dated in Kalamazoo, MI:
Aug 19, 1993

/s/ Richard A. Enslen
RICHARD A. ENSLEN
United States
District Judge

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES
OF AMERICA,

Plaintiff,

v

CHARLES CARLISLE,

Defendant.
_____/

File No. 1:93:CR:66-02
HON. RICHARD A. ENSLEN

ORDER

In accordance with the Opinion entered on this date;

IT IS HEREBY ORDERED that defendant Carlisle's motion for a judgment of acquittal pursuant to Rule 29(c), filed July 23, 1993, is **DENIED.**

Dated in Kalamazoo, MI:
Aug 19, 1993

/s/ Richard A. Enslen
RICHARD A. ENSLEN
United States
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA Plaintiff, VS. CHARLES CARLISLE, Defendant.	DOCKET NO. 1:93:CR:66 OCTOBER 14, 1993. Federal Building, KALAMAZOO, MICHIGAN.

TRANSCRIPT OF SENTENCING
PROCEEDING/DISCHARGE

BEFORE: HONORABLE RICHARD A ENSLEN, UNITED STATES DISTRICT COURT JUDGE.

[2] OCTOBER 14, 1993 KALAMAZOO, MICHIGAN.

THE COURT: The first comment that I have to make is one of decorum. I know that there are a lot of people here that I am sure are here for more than one of the defendants. I insist on absolute silence in the courtroom at all times, and I expect the Marshals and the court officers to carry that forward.

The Court first turns to the case of United States versus Charles Carlisle. It is the Court's file number 1:93:CR:66:2.

In this case on the 12th of April a complaint was filed which later led to an indictment. The indictment was filed I think later in April of 1993, charging six defendants with conspiracy to possess with intent to distribute marijuana in violation of Title 21 United States Code, sections 846 and 841(a)(1).

The case was tried in July with some of the defendants, and on July 13, a jury returned a guilty verdict against Charles Carlisle, Dolores Rupert, Michael Hall, and Amelia Ramon for their part in the one-count indictment charging the marijuana conspiracy. One defendant, Timothy Smith, received a directed verdict of acquittal.

Following the conviction of Mr. Carlisle, his bond was revoked as required, and the Court ordered a presentence report to be prepared, and it was prepared. Mark [3] Restum from the United States Probation Office prepared the report. There were, are a number of unresolved objections to the presentence report today.

Mr. Redford, who prosecuted the case, appears for the government; and the defendant, Mr. Carlisle, appears as does his lawyer, Mr. Graham, Scott Graham.

This morning the Court talked to Mr. Redford, who was here on another trial, and Mr. Graham by telephone, and the lawyer for Ms. Rupert, whose name momentarily escapes me, and the lawyer for Mr. Hall, whose name also escapes me for the moment; and I told them that I had read a case from the Fourth Circuit involving the mandatory minimum guidelines and the responsibility assigned to an individual defendant relating to quantity; and I told them that they should be aware of this and prepared to do two things this afternoon:

One, to argue how the law applies; and secondly, to offer evidence as to the quantity attributable to the defendant under consideration.

That is what I told everybody, I hope. I actually talked to Mr. Redford myself, and I talked to Mr. Graham myself. I did not talk to the two lawyers. I assigned that job to one of my law clerks I believe.

That is the basic setting. The record may not show what I am talking about; so I am going to say a couple of things and only a couple. I don't have that. This will [4] take a few moments.

While she is looking for it, I think I told both Mr. Graham and Mr. Redford that my attention was called to a case in a publication called *Sentencing Guidelines,* that publication I believe to be produced by the Federal Judicial Center, and I believe to be directed to district and circuit judges, and Supreme Court Justices. It is possibly a once-a-month publication. It may come out more often. It highlights sentences around the country on the Sentencing Guidelines. It started about 1987 and continues to come. It used to come more frequently than it does now because the decisions were newer.

And in it I found the Fourth Circuit case which was highlighted this month, *United States versus Irvin.* Its official cite is 2 Fed. 3rd 72. Its LEXIS cite is 1993 21460. And in essence, the Fourth Circuit held the district courts must determine the quantity of narcotics reasonably foreseeable to each individual co-conspirator prior to a determination of the applicability of the mandatory minimum sentencing provisions of section 841.

In accord with *Irvin* is *U. S. vs. Martinez,* 987 Fed. 2nd 920, a Second Circuit decision in 1993; *United States vs. Conkins,* 987 Fed. 2nd 564 at 570, from the Ninth Circuit in 1993; *United States vs. Young,* 997 Fed. 2nd 1204 at 1210 from the Seventh Circuit in 1993; and [5] *United States vs. Rogers,* 982 Fed. 2nd 1241 at 1246 from the Eighth Circuit in 1993.

The Court indicated to both lawyers, I believe, that I had already looked at a Sixth Circuit case or two that were recent. I don't believe I gave either lawyer the cite for the Sixth Circuit case. Now I am going to give the lawyers the cite of the I think most important case in the Sixth Circuit. It is called *United States vs. Jenkins.* It is not reported yet. It is 1993 U. S. Appeals LEXIS 20967. It was decided on August 20th of this year. I think that it will be published. It is not yet published.

The Sixth Circuit endorsed the use of the so-called reasonably foreseeable standard to measure a co-conspirator's personal responsibility for an amount of drugs. It squarely addressed the question, I am now quoting from the Sixth Circuit, quote, "Whether a conspirator is properly found accountable for the full amount of drugs involved in the conspiracy based solely on the finding that the amount involved was foreseeable to him." End quote.

MR. REDFORD: What page is that, Your Honor?

THE COURT: I don't have a page cite for that quote. Yes, I do, too. 4. Star 4. See Start 4. And the "reasonably foreseeable" I have underlined myself. If you have it in front of you, both of you ought to [sic] able to

find it. It doesn't make any difference. You don't need to find [6] it. But I am still on the same case, and I am going to make another comment about it, because this comment goes farther than the Fourth Circuit goes. I am again quoting, and I hope that I know what page I am quoting from. It is 24 and 31. Star 24 to 31, actually through, from 24 through 31. There are ellipses here, Mr. Redford. You aren't going to be able to follow me that closely. So don't worry about it. I am now quoting between those pages.

"A co-conspirator is not necessarily responsible for the total amount of cocaine involved in the conspiracy for the process of establishing his Base Offense Level. Rather, a participant is responsible for other conspirator's conduct only if that conduct was reasonably foreseeable to him and in furtherance of the execution of the jointly undertaken criminal activity." I am going to skip some.

"However, foreseeability is only one of the limitations on the ability of a trial court to charge one participant in a conspiracy with the conduct of the other participants." Leaving out some more.

"In this case, the district court did not address, implicitly or explicitly, the scope of the criminal activity Vincent Sample agreed to jointly undertake."

Now that tells me in the Sixth Circuit as recently as August that there were two inquires [sic] the trial court would have to make: first, the reasonable foreseeability analysis; and even if the individual defendant reasonably foresaw the quantity, the Court had to move to the second issue – did he agree to join the conspiracy or the scope of the conspiracy for that amount. That is what I understand and believe that *Jenkins* stands for.

Of course, it would be the government's responsibility on a preponderance of the burden standard to show the Court, by a preponderance of the evidence, that the defendant reasonably foresaw the quantity involved in this conspiracy, and if he did, that he reasonably, that he, quote, the quote to the Court, "that he implicitly or explicitly joined the scope of the criminal activity."

It is doubtful to me that the prosecutor can do that. I have read the presentence report. There is nothing in the presentence report to suggest anything more than what I heard at trial, and I heard everything in trial.

However, the Court isn't even going to reach that issue. And I now put aside as redundant that issue. Because the Court, instead, is about to do something else; and to do something else, I have to let the lawyers enter my chambers. This is the first time that I have ever done that. So welcome in.

I wrote two opinions, Mr. Graham and Mr. Redford, in August of 1993. The opinion that you saw [8] denied your motion for a judgment of acquittal. The other granted it. I am now reversing myself and granting it. I am going to read you precisely my written opinion as I pulled it off the LEXIS 25 minutes ago, and I would ask you to turn to the August 24th opinion of the Court on the Carlisle motion for a directed verdict, for a judgment of acquittal, excuse me.

And I am going to read the things that are different about it.

That is to say, if I can find it. I have it.

Do either one of you have that?

MR. REDFORD: I have got it, Your Honor.

MR. GRAHAM: I don't.

MR. REDFORD: I will share it with him.

THE COURT: Share it. He will be glad to share this with you.

MR. REDFORD: I am not sure that he should.

THE COURT: The first paragraph is the same.

MR. REDFORD: I am sorry?

THE COURT: By the way, this is available for both of you up here.

The first paragraph is the same.

The "The standard of review" paragraph is the same.

The sentence starting with, rather, the [9] paragraph starting with "the evidence presented" is the same.

The next one beginning "In his opening statement" is the same.

"When Crawford returned" is the same.

The quotes thereafter from Ramon, Carlisle, and Crawford are all the same.

The paragraph beginning "At Rupert's request" is the same.

Starting with, "Upon review of the foregoing standards" – do you see that?

MR. REDFORD: No. Yes, Your Honor.

THE COURT: I now read to you from my first prepared opinion and hereby reverse myself, and return to the first opinion.

Upon review of the foregoing standards. I am sorry.

"Upon review of the evidence in this case under the foregoing standards, I find that it is not sufficient to sustain defendant's conviction. Viewed in the light most favorable to the government, I believe that a rational trier of fact could find beyond a reasonable doubt that" – excuse me.

"Viewed in the light most favorable to the government, I believe that a rational trier of fact could not (sic) find beyond a reasonable doubt that Carlisle knew [10] about the conspiracy. However" – strike it again. Let me try it a third time.

"Viewed in the light most favorable to the government, I believe that a rational trier of fact could find beyond a reasonable doubt that Carlisle knew about the conspiracy. However, I do not believe that a rational trier of fact could find beyond a reasonable doubt, as the jury was instructed in Instruction 10B that it must, that Carlisle knowingly and voluntarily joined the conspiracy. Instruction 10C explained that in order to establish knowing and voluntary joinder, quote, "the government must prove that the defendant knew the conspiracy's main purpose, and that he voluntarily joined it intending to help advance or achieve its goals."

Ellipsis.

"But proof that a defendant simply knew about a conspiracy, or was present at the time, or associated with

members of the group, is not enough, even if he approved of what was happening or did not object to it. Similarly, just because a defendant may have done something that happened to help a conspiracy does not necessarily make him a conspirator. These are all things that you may consider in deciding whether the government has proved that a defendant joined a conspiracy. But without more they are not enough."

End quote, citing Sixth Circuit Pattern [11] Criminal Instruction, 3.03, 1991. I added emphasis in my written opinion to "But without more they are not enough."

I continued.

"The Committee notes cite many cases in support of this instruction. E.g., *United States vs. Richardson*, 596 Fed. 2nd 157, at 162, Sixth Circuit in 1979." Parenthesis. "('There must be proof of an intention or an agreement to cooperate in the crime.'); *United States vs. Bostic*, 480 Fed. 2nd 965, at 968, in 1963. ('There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.')"

I then go back to the written opinion that you both have, I believe, that starts with a sentence that starts: "In the unpublished decision of *United States vs. Burgess*," and so on, and you will find that at the top of page 5.

MR. REDFORD: Got it, Your Honor.

THE COURT: I have that identically, and everything identically until I get to the facts of this case which is on the page where your page 7 begins with the paragraph: "The evidence against Mr. Carlisle."

Do you see that?

MR. REDFORD: I do, Your Honor.

THE COURT: Instead of that – and the sentence [12] below it and the paragraph above it are the same. In that paragraph, instead of what you see, this is what I have first written:

"The facts of this case require the same result as those in *Burgess and Pearce*. The government produced no evidence that Charles Carlisle entered into an agreement with any member of the conspiracy. Like the *Burgess*/ defendant, he was clearly present during the conspiracy, and the jury certainly could have found that he knew about it. However, in the course of hours of tape recorded conversations, no conspirators suggest that Carlisle is involved in this conspiracy. There was no evidence that he was involved in arranging the transport of the marijuana to Michigan. In fact, Crawford testified that prior to coming to Michigan he had never heard of Carlisle. Carlisle had never handled the drugs or the truck which contained them, and there was no evidence that Carlisle was to benefit from the conspiracy. I find that Carlisle's hearsay statement concerning scanners, and the fact that he drove a conspirator" – parenthesis – "(his common law mother-in-law) to her home, and then drove two conspirators to a hotel and dropped them off, is insufficient to establish that he knowingly and voluntarily joined the conspiracy."

Paragraph.

"Viewing the evidence in the light most [13] favorable to the government, I find that the government's case against Charles Carlisle is insufficient to prove beyond a reasonable doubt that Carlisle knowingly and voluntarily

joined the conspiracy. As a result, the defendant's motion will be granted."

The Court even prepared an order which it never signed, which reads: "In accordance with the opinion entered on this date, it is hereby ordered that the defendant Carlisle's motion for a judgment of acquittal pursuant to rule 29(c), filed July 23, 1993, is GRANTED. It is further ordered that the defendant Carlisle is to be discharged from custody."

Now I not only prepared that, but I have it in its original form and I never signed it. I went through a process of thinking. I have changed my mind when I wrote the opinion that you all see. I don't know that I have ever in my life written two opinions like this. But I did. I now say that I was wrong; and I was right the first time, and Mr. Carlisle is discharged. It is as simple as that. No, no, no noise, no demonstrations. Thank you.

MR. REDFORD: May we have a side bar? (Unrecorded side bar conference.)

THE COURT: Let's take a recess out here for a minute.

(Recess.)

[14] THE COURT: There was a brief recess in this proceeding while I talked with the two lawyers about a number of things, one or two of which I am going to put on the record, and also, to allow Mr. Redford to make a phone call that he wanted to make.

Part of the discussion in chambers had to do with a letter that the Court received from the defendant a few days ago. And the record should show that I have made

that letter available for the defense lawyer to see and the government lawyer to see, with the approval of the defense lawyer, and that it may be a sealed document following this appeal in the event that the government appeals.

Secondly, I discussed with the lawyers briefly that I had read the presentence report, which I guess ought to be obvious to everybody, and I note for the first time when I read the presentence report that Mr. Carlisle served his country in Vietnam in 1967 or 1968, and that while he was there he received the Bronze Star. The specific mention in the presentence report is just labeled paragraph 42.

It reads as follows. "On January 24, 1967, Charles Carlisle enlisted in the United States Army. The defendant was honorably discharged from service on January 24, 1969. While in the army, Mr. Carlisle served 11 months and 27 days in foreign service, participating in the Vietnam campaign. He received the Army Commendations Medal [15] and the Bronze Star. The defendant had a E-5 rank at separation. Mr. Carlisle stated he was proud to serve his country although he did not like what he saw regarding the injuries and casualties, and the feeling that he was, quote, losing family, end quote during his campaign. Mr. Carlisle served as a combat medic during his tour in Vietnam."

The Court doesn't meet too many Bronze Star recipients. Mr. Carlisle, on behalf of my country I thank you for your service in Vietnam. This is the end of this

proceeding. We will recess briefly and take up the matter of Ms. Rupert.

(Conclusion of Proceeding.)

United States District Court

For the Western District of Michigan

UNITED STATES OF AMERICA,
Plaintiff,

v

CHARLES CARLISLE,
Defendant.

File No. 1:93:CR:66-02
HON. RICHARD A. ENSLEN

OPINION

In accordance with the oral opinion delivered from the bench on October 14, 1993, and for the reasons given therein, this Court's Opinion and Order of August 19, 1993, is withdrawn. In its place, the Court enters the following Opinion and Judgment:

The matter before the Court is defendant Carlisle's motion for a judgment of acquittal pursuant to Fed. R. Crim. P. 29(c). Defendant was charged in a single count Indictment with conspiracy to possess marijuana with intent to distribute. On July 13, 1993, a jury found defendant guilty.[1] Defendant's motion does not claim that there

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[1] Rule 29(c) allows defendants seven days after the jury is discharged, "or within such further time as the court may fix during the 7-day period," to bring a motion for judgment of acquittal. The government correctly points out that this deadline occurred on July 22 in this case, but defendant's motion was filed on July 23. However, I can conceive of no prejudice to the United States which will result from consideration of a motion that is one day later in this case. Because I believe that refusal to hear this motion would result in grave injustice, and because the Rule permits the Court to extend the deadline, I will consider this motion as if it were filed in a timely manner.

was not an agreement to possess and distribute marijuana. Instead, his motion argues that the evidence was insufficient to prove that he joined the conspiracy.

The standard of review for claims of insufficient evidence is "whether after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original); *United States v. Boling*, 869 F.2d 965 (6th Cir. 1989). Reviewing the evidence in the light most favorable to the government means that I must make all credibility choices and inferences in a manner that supports the jury's verdict. Further, circumstantial evidence alone is sufficient to sustain a conviction and such evidence need not remove every reasonable hypothesis except that of guilt. *United States v. Stone*, 748 F.2d 361, 363 (6th Cir. 1984).

The evidence presented against Carlisle at trial was as follows. On the evening of April 10, 1993, defendant Rupert, Carlisle's common-law wife, defendant Ramon, Ms. Rupert's mother, and Thomas Crawford arrived at the residence on Yale Street that Carlisle and Rupert Shared. Ramon travelled in a car driven by Rupert, and they were followed by a truck full of marijuana. That truck was driven by Crawford, the government's primary witness, who was wearing a tape-recording device at the time.

In his opening statement, defendant's counsel stated that Rupert told Carlisle that the truck contained marijuana, and that she was scared. The inference that Carlisle knew that the truck contained marijuana could also be

drawn from a hearsay statement by Rupert I admitted. As soon as Ramon, Rupert and Crawford arrived at the Yale Street residence, Crawford recorded the following statement of Rupert: "Okay, just pull out and Chuck [Carlisle] says to go down the street and just park for awhile because he said he's heard over the scanner, there's some cops around here."[2] Cassette #1A, p. 5. Crawford parked the truck down the street.

When Crawford returned from parking the truck he was introduced to Carlisle. Crawford testified that Carlisle was quiet and did not appear nervous. At this point, the parties appear to be discussing where to park the truck for the evening, and the following conversation ensued:

Ramon:	We can park it behind the house.
Crawford:	All right might good.
Carlisle:	Figure right down the drive.
Ramon:	Yeah, because my son called, my grandson called and said there was cops around here.
Rupert:	around this area
Ramon:	unintelligible

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[2] This hearsay statement was the only evidence that there was a scanner in the Carlisle/Rupert home. A neighbor testified that she had been in the home on a daily basis during the time period in question, and never saw a scanner. Further, Agent Munson testified that he had been in the house and the back bedrooms, and never saw a scanner.

Amelia Ramon made reference to her grandson picking up signals on scanners. That person does not reside in the Carlisle/Rupert residence.

Rupert: and we don't want to take a chance right now

Carlisle: We don't want to take no chances.

Crawford: No, uh uh, that's why I was going, I, the speed limit was thirty and so I stayed right on it.

Ramon: Yeah? Oh and before I forget, on the key, the combination. I took the thing off and I put it on there so . . .

Carlisle: Okay . . . is that for the back?

* * * (One page later) * * *

Ramon: We're going (unintelligible)

Crawford: Oh yeah its best not take any . . .

Carlisle: No I won't take no chances . . .

Crawford: Okay.

Id. at 5-7.

At Rupert's request, Carlisle then drove Amelia Ramon to her home shortly after Rupert, Ramon and Crawford arrived at the Yale Street residence. The truck full of marijuana, driven by Crawford, followed. The truck was left at Ramon's home, and Crawford joined Carlisle and Ramon in the car. Carlisle then drove Crawford and Ramon to the Stouffer Hotel. During this trip, tape recordings indicated that there was nothing but casual banter about topics such as cars and the city of Battle Creek. Carlisle dropped them off and left. There was no evidence that Carlisle had any further contact with any member of the conspiracy.

Upon review of the evidence in this case under the foregoing standards, I find that it is not sufficient to

sustain defendant's conviction. Viewed in the light most favorable to the government, I believe that a rational trier of fact could find beyond a reasonable doubt that Carlisle knew about the conspiracy. However, I do not believe that a rational trier of fact could find beyond a reasonable doubt, as the jury was instructed in Instruction 10B it must, that Carlisle knowingly and voluntarily joined the conspiracy. Instruction 10C explained that in order to establish knowing and voluntary joinder,

> the government must prove that [the defendant] knew the conspiracy's main purpose, and that he voluntarily joined it intending to help advance or achieve his goals. . . . But proof that a defendant simply knew about a conspiracy, or was present at the time, or associated with members of the group, is not enough, even if he approved of what was happening or did not object to it. Similarly, just because a defendant may have done something that happened to help a conspiracy does not necessarily make him a conspirator. These are all things that you may consider in deciding whether the government has proved that a defendant joined a conspiracy. **But without more they are not enough.**

Sixth Circuit Pattern Criminal Instruction No. 3.03 (1991) (emphasis added). The Committee Notes cite many cases in support of this instruction. *E.g., United States v. Richardson*, 596 F.2d 157, 162 (6th Cir. 1979) (there must be proof of an intention an [sic] agreement to cooperate in the crime); *United States v. Bostic*, 480 F.2d 965, 968 (6th Cir. 1973) (there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose).

In the unpublished decision of *United States v. Burgess*, 1992 U.S. App. LEXIS 34740 (6th Cir.), the court acknowledged that "[c]onspiracy cases often present difficult questions about the extent to which seemingly passive participants are nonetheless culpable members of the conspiracy." *Id.* at *21. The appellate panel went on to hold that there was insufficient evidence to support defendant Burgess, conviction for conspiracy to possess marijuana with intent to distribute. In *Burgess*, a defendant named Muncy planned to buy marijuana from DEA agent and informant. Muncy drove to the scheduled rendezvous point with Burgess and a third defendant, Rose. When they arrived, Muncy walked to the agents' car and discussed the purchase. Muncy then went back to his own car and brought Rose to the agents' car with him. After the transaction began, all three were arrested. A search of the car revealed a loaded revolver and $15,000 in cash in the front seat, and scales in the trunk.

Upon review of these facts, the Sixth Circuit concluded that the jury could have inferred Burgess' knowledge of the purpose of the trip. White's possession of money to purchase marijuana, and even the presence of a weapon in the car. However, because Burgess did not participate in the discussions with the agents, he was not mentioned in those conversations, he did not drive the car, and he never left the middle of the front seat, the court held that a rational trier of fact could not find that Burgess knowingly and voluntarily joined the conspiracy.

United States v. Pearce, 912 F.2d 159 (6th Cir. 1990), *cert. denied sub nom Thorpe v. United States*, 111 S.Ct. 978 (1991), provides another example of evidence which the Sixth Circuit found to be sufficient to sustain a conspiracy

conviction. Defendants Thorpe and Pearce were convicted of conspiring to possess and distribute crack in violation of 21 U.S.C. § 846 on the following evidence. A SWAT team entered what they suspected was a crack house after an informant purchased crack at the house with registered bills. When they entered, Thorpe ran into the basement yelling "it's a bust." The SWAT team found Thorpe nearby two doses of crack and a loaded revolver. Thorpe had a live round in his pocket that matched those found in the gun. The police found Pearce sitting on a couch in the living room. Next to him was a bag of crack and the registered bills the informant used in his purchase.

The Sixth Circuit reversed both conspiracy convictions. It found that the record was devoid of any evidence that Thorpe and Pearce had entered into an agreement. Although the defendants' presence at the house was unexplained, the court concluded that the no rational trier of fact could have found that even tacit coordination between Thorpe, Pearce, or any third party, to maintain a crack house or to distribute crack.

The facts of this case require the same result as those in *Burgess* and *Pearce*. The government produced no evidence that Charles Carlisle entered into an agreement with any member of the conspiracy. Like the *Burgess* defendant, he was clearly present during the conspiracy, and the jury could have found that he knew about it. However, in the course of hours of tape recorded conversations, no conspirators suggest that Carlisle is involved in the conspiracy. There was no evidence that he was involved in arranging the transport of the marijuana to Michigan. In fact, Crawford testified that prior to coming

to Michigan, he had not heard of Carlisle. Carlisle never handled the drugs or the truck which contained them, and there was no evidence that Carlisle was to benefit from the conspiracy. I find that Carlisle's hearsay statement concerning the scanners, and the fact that he drove a conspirator (his common law mother-in-law) to her home, and then drove two conspirators to a hotel and dropped them off, is insufficient to establish that he knowingly and voluntarily joined the conspiracy.

Viewing the evidence in the light most favorable to the government, I find that the government's case against Charles Carlisle is insufficient to prove beyond a reasonable doubt that Carlisle knowingly and voluntarily joined the conspiracy. As a result, defendant's motion will be granted.

Dated in Kalamazoo, MI: "s/Richard A. Enslen"
October 27, 1993 RICHARD A. ENSLEN
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,
Plaintiff,

v

CHARLES CARLISLE,
Defendant.

File No.
1:93:CR:66-02
HON. RICHARD
A. ENSLEN

_____/

JUDGMENT

(Filed Oct 28, 1993)

In accordance with the Opinion entered on this date;

IT IS HEREBY ORDERED, in accord with the oral opinion delivered from the bench on October 14, 1993, and for the reasons given therein, this Court's Opinion and Order of August 19, 1993, is **WITHDRAWN**.

IT IS FURTHER ORDERED that defendant Carlisle's motion for a judgment of acquittal pursuant to Rule 29(c), filed July 23, 1993, is **GRANTED**.

Dated in Kalamazoo, MI: /s/ Richard A. Enslen
Oct. 27, 1993 RICHARD A. ENSLEN
United States District Judge

Nos. 93-2373/2380/2470; 94-1105

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* *v.* DELORES RUPERT (93-2373); MICHAEL HALL (93-2380); and AMELIA RAMON (94-1105), *Defendants-Appellants.*	ON APPEAL from the United States District Court for the Western District of Michigan
UNITED STATES OF AMERICA, *Plaintiff-Appellant,* *v.* CHARLES CARLISLE (93-2470), *Defendant-Appellee.*	

Decided and Filed February 21, 1995

Before: BROWN, RYAN, and BOGGS, Circuit Judges.

BOGGS, Circuit Judge. Rupert, Ramon, and Hall appeal their convictions for conspiracy to possess marijuana with the intent to distribute, in violation of 21 U.S.C. §§ 841 and 846. The government appeals the court's granting of Carlisle's motion for acquittal. We affirm the convictions of Rupert, Ramon, and Hall, and reverse Carlisle's acquittal. Our discussion of the issues

presented by Rupert, Ramon, and Hall is contained in an unpublished appendix to this decision.

I

The government argues on appeal that the district court lacked jurisdiction to acquit Carlisle.

On July 13, the jury convicted Carlisle, along with the other defendants before us, of one count of conspiracy to possess marijuana with intent to distribute. On July 23, Carlisle filed a motion for judgment of acquittal. The seven-day period in which Carlisle could move for acquittal under Fed. R. Crim. P. 29 does not include weekends, so it lapsed on July 22. The district court denied Carlisle's motion on August 24, 1994.

When Carlisle appeared for sentencing on October 14, however, the court on its own motion reversed its earlier decision and granted Carlisle's motion for acquittal.[1] The court wrote: "I do not believe that a rational trier of fact could find beyond a reasonable doubt, as the jury was instructed in Instruction 10B it must, that Carlisle knowingly and voluntarily joined the conspiracy." The

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[1] The court noted in footnote 1 of its Opinion:
The government correctly points out that . . . defendant's motion was filed on July 23. However, I can conceive of no prejudice to the United States which will result from consideration of a motion that is one day late in this case. Because I believe that refusal to hear this motion would result in grave injustice, and because the Rule [29] permits the court to extend the deadline, I will consider this motion as if it were filed in a timely manner.

district court held that the evidence was insufficient to convict under *Jackson v. Virginia*. Following the Sixth Circuit's decision in *United States v. Burgess*, 931 F.2d 893 (6th Cir. 1991) (Table), 1991 WL 66056, and *United States v. Pearce*, 912 F.2d 159 (6th Cir. 1990), *cert. denied*, 111 S. Ct. 978 (1991), the district court found that the government failed to prove that Carlisle entered into an agreement.

Under Rule 29, it is beyond the court's jurisdiction to grant an untimely motion for acquittal. Furthermore, it is beyond a court's jurisdiction to enter a judgment of acquittal *sua sponte* after the case has been submitted to the jury. Fed. R. Crim. P. 29; *United States v. Davis*, 992 F.2d 635, 640 (6th Cir.), *cert. denied*, 114 S. Ct. 265 (1993); *see also United States v. Dennard*, 7 F.3d 235 (6th Cir. 1993) (Table), 1993 WL 351742.

In *Davis*, as here, the district court initially denied defendant's motion for acquittal. At sentencing, however, the court, as here, reversed its previous decision, asserting that it had the inherent authority to consider a judgment of acquittal after the discharge of the jury "if necessary to correct manifest injustice." *Id.* at 637. On appeal, we ruled that a district court does not have such inherent authority. *Id.* at 638. We noted that there is no provision in Rule 29 that allows a court to act on its own initiative after the case is submitted to the jury. *Id.* at 639. However, under Rule 29(c), if Carlisle had moved for acquittal within seven days of the discharge of the jury (or later, if the court so allowed during that seven-day period), it would have been within the court's jurisdiction to grant Carlisle's motion for acquittal.

The district court lacked the jurisdiction to acquit Carlisle. We therefore must reverse the judgment of acquittal.

II

In conclusion, we affirm the convictions of Ramon, Rupert, and Hall. However, we reverse Carlisle's judgment of acquittal and remand for the district court to reinstate the jury's verdict and for sentencing.

UNITED STATES DISTRICT COURT
Western District of Michigan

UNITED STATES OF AMERICA V. CHARLES ALLAN CARLISLE	**AMENDED JUDGMENT IN A CRIMINAL CASE (For Offenses Committed On or After November 1, 1987)** (Filed July 7, 1995) Case Number: 1:93 CR 66-02

James Christopherson
Defendant's Attorney

IT IS HEREBY ORDERED that pursuant to Rule 35(c) of the Federal Rules of Criminal Procedure, the judgment entered on June 27, 1995 is **VACATED.**

THE DEFENDANT was found guilty on count one after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18:841(a)(1) 18:846 & 2	Conspiracy to possess with intent to distribute and possession with intent to distribute marijuana.	4-11-93	1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay a special assessment of $50.00 which shall be due immediately.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Date of Imposition Sentence: June 27, 1995

Defendant's Soc. Sec. No.: 374-50-0463

Defendant's Date of Birth: 6-19-48

Defendant's Address: 218 Yale, Battle Creek, MI 49017

DATED: July 7, 1995

/s/ Richard A. Enslen
Richard A. Enslan
United States District Judge